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July 18, 2012

Anthony Herman  
General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463  
VIA FED-EX # 79863464421

**Re: MUR 6594 (Friends of Chris Stewart, Inc)**

Dear Mr. Herman,

By and through the undersigned counsel, this Response to the Complaint designated as Matter Under Review 6594 is submitted on behalf of Friends of Chris Stewart, Brian Steed, Chris Stewart, Chris Marston (as Treasurer) and Randy Minson. For the reasons set forth below, the Commission should find no reason to believe that the respondent violated the Federal Election Campaign Act of 1971, as amended (the "Act" or "FECA"), and the Commission should expeditiously dismiss the Complaint.

The four complainants competed against Chris Stewart for the Republican nomination for Utah's Second Congressional District, and lost. Here, they frivolously cast aspersions in a petty attempt to explain their defeat. In the end, the complainants attempt at writing a tale of conspiracy and corruption fails as the facts of their story are as baseless as they are implausible. In short, the complainants' calumnies are replete with rumors and bereft of evidence.

In the end, after nine single space pages of innuendo and aspersions, there is only one alleged violation of the FECA: that a single anonymous letter appeared within days of the Utah Republican Party State Nominating Convention ("the convention") and the letter did not contain the proper disclosure and disclaimer requirements. In the remaining pages, the complainants chimerically attempt to prove that *someone*—the complainants themselves do not even attempt to surmise a potential individual culprit—in the Chris Stewart campaign authored the letter. As will

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be shown below, there is no evidence to demonstrate or sustain any reasons to believe finding that any respondent violated the FECA.

### **THE FEC'S DISCLAIMER RULES**

FEC regulations require that mass mailings by a political committee. See 11 C.F.R. § 110.11(a)(1); see also 11 C.F.R. § 100.26. Similarly, the FEC requires emails from a political committee that contain substantially similar content and that reach 500 or more individuals must contain the appropriate disclaimer. 11 C.F.R. § 110.11(a)(1). The appropriate disclaimer for mailings from a candidate's committee notifies the reader that the campaign paid for the mailing. The regulations give the following example: "Paid for by the John Smith for Congress Committee." 11 C.F.R. § 100.11(b)(1). Additionally, the disclaimer must be clear and conspicuous which means that the print must be easy to read and the placement of the disclaimer is not easily overlooked. 11 C.F.R. § 100.11(c)(1). For printed materials, to satisfy the clear and conspicuous standard, the disclaimer must be placed in a box and set apart from the rest of the contents. Furthermore, there must be sufficient color contrast between the print and the paper which the statement is printed on. 11 C.F.R. § 110.11(c)(2)(ii-iii).

By definition, the anonymous letter did not contain the appropriate disclaimers and therefore violated the FEC regulation requiring such disclaimers if the letter came from a political committee. The outstanding matter in this case is the identity of the individual or individuals responsible for authoring the letter. The respondents in this matter have no information helpful in identifying the source of the anonymous letter.

### **THE EVIDENCE OF VIOLATION IN THE COMPLAINT**

The respondents categorically deny they had anything to do with this anonymous letter or knew of its existence prior to the response letter. (Steed Aff. ¶ 24); (Stewart Aff. ¶¶ 8-11); Minson Aff. ¶ 9).

#### **A. THE POST OFFICE TIME STAMP ONLY REVEALS WHETHER THE LETTER WAS PROCESSED IN THE MORNING OR IN THE AFTERNOON/EVENING AND WHICH MACHINE PROCESSED THE LETTER.**

The Complaint's first argument is based upon erroneous facts. The Complainants contend that this letter must have come from the Chris Stewart campaign, because there was not enough time to draft, edit, print, fold and stuff envelopes and mail the response letter to nearly 1,000 persons in less than 24 hours after receiving the anonymous letter. (Compl. at 3-4). The Complainants state that the Chris Stewart response letter must have been driven from Farmington, Utah to a post office in Salt Lake City—30 minutes driving time—and mailed from a Salt Lake City post office because the envelopes were stamped Salt Lake Post Office 841.

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(Compl. at 3). The Complainants further state that the letter must have been mailed by 1 P.M. because the envelope is stamped 1 P.M. (Compl. at 3).<sup>1</sup> The response letter, according to the Complainants, was mailed to nearly all the 973 delegates in the Second Congressional District. (Compl. at 3 and 4). The Complainants conclude, therefore, that without advance knowledge of the anonymous letter, it would have been nearly impossible for the Chris Stewart campaign to mail the response letters by 1 P.M. within 24 hours. The only reasonable conclusion, the Complainants contend, is that the Chris Stewart campaign, or his agents, pre-planned the anonymous letter and the Chris Stewart letter. (Compl. at 4).

Margaret A. Putnam is the Manager, Consumer Industry Contact, at the Salt Lake City Post Office and has been a United States Postal Service employee for 28 years. (Putnam Aff. at 1). As shown in her affidavit, Ms. Putnam analyzed four envelopes that contained the Chris Stewart response letter. (Putnam Aff. ¶ 1). First, contrary to the Complainants belief, no one had to drive from Farmington, Utah to Salt Lake City, Utah to any post office referred to by the Complainants as "Salt Lake Post Office 841". (Compl. at 3) As Ms. Putnam affirms, the 841 identifier is not an individual post office, but a processing and distribution center that is located in Salt Lake City. (Putnam Aff. ¶¶ 2-3). Ms. Putnam continues saying that this processing and distribution center collects mail from over 80 post offices that include post offices as far north as the Idaho border to as far south as Orem, Utah. (Putnam Aff. ¶¶ 5-6).

Second, the Complainants erroneously contend the letter was time stamped at the post office at 1 P.M. Instead, the letter was *processed* at the distribution center, *sometime* in the afternoon (P.M.). (Putnam Aff. ¶ 8). Furthermore, contrary to the Complainants assertion, the 1 does not indicate the time that the letter was mailed, nor does it indicate the time the letter was processed. The 1 simply indicates which machine at the distribution center processed the letter. (Putnam Aff. ¶ 9). All the stamp indicates therefore, is that the letter was processed sometime during the P.M. hours at the Salt Lake City processing and distribution center. (Putnam Aff. ¶¶ 8-9).

Turning to the campaign's ability to draft, process and mail the response letters, Mr. Brian Steed, Chris Stewart's campaign manager, Mr. Stewart himself and Mr. Minson, an independent contractor, all declare that they first learned of the "anti-Chris Stewart mailing" at approximately 10:30 in the morning on April 19, 2012 while Steed and Stewart were on the road en route to a meeting. (Steed Aff. ¶ 2); (Stewart Aff. ¶ 11); Minson Aff. ¶¶ 1, 4). Because of Mr. Stewart's and Mr. Steed's concern over the content of the mailing, they abruptly ended their scheduled meeting with Mr. McSwaine. (Steed Aff. ¶ 4); (Stewart Aff. ¶ 12). They arrived at the office between 10:45 and 11:00 A.M. (Steed Aff. ¶ 5) After expressing his concern with the campaign's counsel and considering filing an FEC complaint, Steed Aff. ¶¶ 8-9) the campaign decided it needed to rapidly respond due to the Republican Convention on April 21. (Steed Aff.

<sup>1</sup> The stamp on the response letter envelope reads "Salt Lake City UT 84119 APR 2012 PM 1 L". (Complainants' Ex. F).

¶¶ 10-11). Candidate Chris Stewart took the lead in responding and wrote the response letter in approximately 30 minutes. (Steed Aff. ¶ 12); (Stewart Aff. ¶ 14).

Contrary to the four former Republican challengers' contention, the response letter was not mailed to nearly all of the delegates. Instead, as the convention was only two days away, the letter was mailed only to those delegates for whom the campaign had a physical mailing address, but no email address. (Steed Aff. ¶ 11); (Stewart Aff. ¶¶ 16-17); (Minson Aff. ¶ 7). Those delegates amounted to 414 delegates, less than half the total delegates. (Steed Aff. ¶ 11); (Minson Aff. ¶ 7). The remaining delegates received an electronic version of the response letter. (Steed Aff. ¶ 11).

The response letter went through two drafts, the second being reviewed around 3:00 P.M. (Steed Aff. ¶¶ 13-16); (Stewart Aff. ¶ 15). The letter is four short paragraphs long and fits entirely on one page, consisting of maybe half the page. (Complainants' Ex. F) Several volunteers, including Chris Stewart's wife and fourteen year old daughter, assisted in folding the 414 letters and stuffing them into 414 envelopes. (Steed Aff. ¶ 18); (Stewart Aff. ¶ 18). This process was completed after 5:00 P.M. on April 19, 2012. (Minson Aff. ¶ 7). (Steed Aff. ¶ 19-20); (Stewart Aff. ¶ 19). The letters were then driven to the Salt Lake City Post Office and dropped off at 7:30 P.M. (Steed Aff. ¶ 20). The post office there has a 10 P.M. pick up time. (Steed Aff. ¶ 19); (Stewart Aff. ¶ 20).

This explanation satisfied the Chairman of the Utah Republican Party who conducted a two week investigation of this matter. (Complainants' Exs. M1 at 1 and M2 at 2-3). The Chairman went as far as to say that the campaign's ability to respond as quickly as it did was the mark of a good campaign. (Complainants' Ex. M2 at 1). The Chairman's report explicitly found that the Chris Stewart campaign, and not just Christ Stewart himself, had no prior knowledge of the anonymous letter. (Complainants' Ex. M2 at 1).

Therefore, the campaign spent from 10:30 A.M. to after 5:00 P.M. responding to the anonymous letter. During this time, the campaign and its volunteers, drafted, reviewed, edited, printed, folded and stuffed into 414 envelopes, the campaign's ½ page response letter. Given the printing speed of most modern printers, the print job was not time consuming. The letter was physically mailed to 414 delegates and electronically mailed to the remaining delegates. Such a task is well within the realm of possibility for a successful campaign operation without any advanced warning.<sup>2</sup>

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<sup>2</sup> The Complainants are similarly flummoxed because, to the Complainants, if the Stewart campaign was concerned about rapidly responding, then the corresponding response email should have been sent the same day as the letters were mailed. (Compl. at 4). Complainants' Exhibit G contains a copy of the email. The email demonstrates that it was sent minutes after midnight on April 20, or, a few hours after the letters were mailed. This occurred because, in the campaign's rush to get the letters to the post office, the campaign had inadvertently forgotten to email the letters. (Steed Aff. ¶ 21). Regardless, emailing the response letter in the early morning hours of April 20 allowed everyone to receive the response letter on the same day, whether physically or electronically.

**B. COMPLAINANTS OTHER ALLEGATIONS ARE FALSE AND WOULD NOT CONSTITUTE VIOLATIONS OF THE FECA EVEN IF TRUE**

The next portion of the complaint tries to weave several allegations into some conspiracy to violate federal election law, related to some barely intelligible "accusation" that the Stewart campaign was falsely accusing others of establishing an "Anybody But Chris" committee and engaging a conspiracy with another candidate that Mr. Stewart barely knows. Respondents categorically deny that this is true. Even if true, however, there is no credible allegations of any violation of the FECA contained in this portion of the complaint.

The Complainants essential facts are as follows:

- One of the four Complainants claims not to have received an email from the Stewart campaign complaining about the alleged "Anybody But Chris" campaign. (Compl. at 4-5).
- Glenn Beck, a friend of Chris Stewart's, claimed that a new website exists that was put together by three or four individuals known at the "Anyone But Chris Committee." (Compl. at 5).
- Radio show host Doug Wright, and a friend of both Chris Stewart and Milt Hanks, after the convention said that pre-convention, he had heard rumors of an "Anybody But Chris" club. According to the Complainants' theory, because Mr. Wright is friends with both Mr. Stewart and Mr. Hanks, the two candidates must have been in a conspiracy together to create the Anyone But Chris club and they were Mr. Wright's source. (Compl. at 5).
- Milt Hanks campaign was a sham and he is close friends with Stewart's campaign staff and was a supporter of Chris Stewart's before he ran. Mr. Hanks must have been set up by the Stewart campaign to deliver the anonymous letter conspiracy speech. (Compl. at 6).

Each of these four points, even if true, would not constitute a violation of the Federal Election Campaign Act.

Concerning the alleged email from the Stewart campaign that was not received by the Complainant Eagar's campaign, even if it is true that one of the four complainants didn't receive it, there is nothing in the FECA that requires that all public communications by a candidate committee be sent to everyone. Ms. Eagar has no factual basis to allege some conspiracy theory because Ms. Eagar did not receive a single electronic mail communication. It also defies the basic rules of logic that if the Stewart campaign were trying to "hide" some communication from opposing candidates, that 3 of the 4 complainants here received the communication.

With respect to statements by Glenn Beck, the Complainants selectively read the transcript to tease out of the document something that remotely resembles a violation of the FECA. The Complainants claim that both Mr. Beck and Mr. Stewart claimed that a new website came out saying "horrible, horrible things" about Chris Stewart and the website was put together

by three or four opposing candidates who comprise the Anyone But Chris Committee. Initially, we note that under 11 C.F.R. §§ 100.94 and 100.155, volunteer activity on the internet is exempt from regulation by the FECA.

The transcript begins with Glenn Beck asking Mr. Stewart about a story Mr. Stewart and Mr. Beck had read on their way to the radio station in Phoenix. (Complainants' Ex. K at 1). The story they were reading was about a new website that accused Mr. Stewart of lying about his record flight time around the world while serving in the Air Force. (Complainants Ex. K at 1). After discussing his record flight time around the world, Glenn Beck then says "They are also saying that you are um...I mean just horrible, horrible things...." (Complainants' Ex. K at 2). Beck then seems to change the subject and discuss the upcoming convention. (Complainants' Ex. K at 2). Then Mr. Beck says "You are way ahead in the polls. How many people are coming against you." (Complainants' Ex. K at 2). Mr. Stewart responds that there are three or four other candidates. (Complainants' Ex. K at 2). Mr. Beck then asks "[H]ave they really put together buttons that say 'ABC' on them?" Mr. Stewart responded "Yea, that's what I heard. We haven't seen them but yea that's what we've been told." (Complainants' Ex. K at 2).

First, it is unclear from the transcript whether the "horrible, horrible things" being said about Mr. Stewart are from the website referenced in the discussion concerning Mr. Stewart's Air Force record, or if those horrible things were from the three or four other candidates. Second, it is not entirely clear that the website and the three or four other candidates are connected. Mr. Stewart never acknowledges that the website mentions an Anybody But Chris Committee. Mr. Stewart only acknowledges what he has heard. In any event, a website saying negative things about a candidate does not constitute a violation of the FECA, and the Complainants present no evidence that the Stewart campaign was involved in such a website.

There is simply no evidence that Mr. Stewart concocted a scheme whereby he would falsely accuse the Complainants of violating the FECA. Even if read the way the Complainants read it, the Glenn Beck interview does not indicate that Mr. Stewart was intentionally falsely declaring that his primary opponents were developing an ABC committee. Mr. Stewart merely reported what he heard and that he had not personally seen anything. What the interview does suggest, and what this Complaint confirms, is that simply by the nature of all of them competing for the same nomination, the four Complainants did not want to see Mr. Stewart secure the nomination.

Concerning the comment by Mr. Doug Wright, the Stewart campaign has no information with respect to the factual basis for his comments. Complainants allege that because Mr. Doug Wright is a "friend" of both Stewart and Hanks, and because he said something that vaguely fits within the wild conspiracy theory put forward in the complaint, there "must" be something there. There is absolutely no proof of anything presented by Mr. Doug Wright's comments.

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Finally, the complainants seem to allege that the Hanks campaign and the Stewart campaign are affiliated. This is patently untrue. From the declarations of Brian Steed, and Mr. Stewart there is simply no evidence of any relationship whatsoever between the Stewart campaign and Mr. Hanks. (Steed Aff. ¶ 25); (Stewart Aff. ¶¶ 1-6). Furthermore, in documents submitted by the Complainants, the Utah Republican Party in its detailed investigative report, determined that Mr. Hanks was not a "plant" for the Stewart campaign. (Complainants' Ex. M2 at 1).

### **CONCLUSION**

Based on the foregoing, and the utter and complete lack of evidence of violations of the FECA, Respondents respectfully request that the Commission expeditiously review this matter, find no reason to believe that a violation has occurred, and dismiss the Complaint.

Please to not hesitate to contact us if you have any additional questions.

Sincerely,



Jason Torchinsky  
Shawn Sheehy  
Counsel to Respondents